

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

JOEL M. FRANTUM,

Debtor.

Case No. **05-60547-13**

O R D E R

At Butte in said District this 30th day of August, 2005.

In this Chapter 13 bankruptcy, after due notice, a hearing was held August 16, 2005, in Butte on confirmation of Debtor's Second Amended Chapter 13 Plan filed July 12, 2005, together with the objections thereto filed by Holly Smith and the Chapter 13 Trustee. The Chapter 13 Trustee, Robert G. Drummond, was present at the hearing as was Debtor's counsel of record, Richard A. Ramler. In addition, Holly Smith was represented at the hearing by her counsel, Harold V. Dye. No exhibits were offered into evidence, but Debtor Joel Frantum testified.

Debtor filed a First Amended Chapter 13 Plan on June 22, 2005, and after due notice, a hearing on confirmation of said Plan was held July 6, 2005. On June 28, 2005, prior to the confirmation hearing, the Trustee filed a written objection to confirmation of Debtor's First Amended Chapter 13 Plan complaining that Debtor was failing to commit 100% of his disposable income to fund the Plan as required by 11 U.S.C. § 1325(b)(1)(B) because Debtor failed to provide for increased plan payments after sale of a pull trailer. As set forth in an Order entered by the Court on July 6, 2005, Debtor conceded the Trustee's disposable income objection

and requested 10 days to file a second amended Chapter 13 plan. Debtor's First Amended Chapter 13 Plan called for plan payments of \$600.00 per month for a period of 3 months and then provided for payments of \$125.00 per month for a period of 33 months. In accordance with the Court's Order of July 6, 2005, Debtor filed a Second Amended Chapter 13 Plan on July 12, 2005. Debtor's Second Amended Chapter 13 Plan proposes payments of \$600.00 per month for the first 3 months of the plan and then proposes payments of \$325.00 per month for a period of 33 months. In essence, it appears that Debtor has increased the funding of this Chapter 13 plan by the amount of the tool trailer payment.

Notwithstanding the increased funding provided for by Debtor's Second Amended Chapter 13 Plan, both the Trustee and Holly Frantum have again attacked Debtor's Second Amended Chapter 13 Plan, primarily arguing that Debtor has failed to satisfy the disposable income requirements of 11 U.S.C. § 1325(b) in that Debtor's scheduled monthly expenses are either fictitious or excessive. Section 1325(b)(1) of the Bankruptcy Code provides that if an unsecured creditor or the trustee objects to confirmation of a Chapter 13 plan, and the plan does not provide for 100% payment to all unsecured creditors, then a debtor must commit all disposable income to the plan. Section 1325(b)(2) defines the term "disposable income" as:

--income which is received by the debtor and which is not reasonably necessary to be expended--

(A) for the maintenance or support of the debtor or a dependent of the debtor, including charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section § 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures

necessary for the continuation, preservation, and operation of such business.

11 U.S.C. § 1325(b)(2); *In re Cavanagh*, 18 Mont. B.R. 109, 111-12, 242 B.R. 707, 710 (Bankr. D. Mont. 2000), *aff'd*, 18 Mont. B.R. 351, 352, 250 B.R. 107, 110-11 (9th Cir. BAP 2000); *In re Sutton*, 19 Mont. B.R. 220, 228 (Bankr. D. Mont. 2001); *In re Eiesland*, 19 Mont. B.R. 194, 204 (Bankr. D. Mont. 2001). Whether particular expenses or expenditures qualify as “reasonably necessary” depends on the facts and circumstances of each individual case. *In re Shaffer*, 15 Mont. B.R. 286, 288 (Bankr. D. Mont. 1996).

In the instant case, Debtor testified that his income, as set forth on Schedule I, is understated because Debtor’s union dues are 6% of his gross wages, or \$259.00, as opposed to the \$110.00 listed by Debtor on Schedule I. Also, Debtor testified that his fiancé receives \$69.00 per month in child support.¹ Adjusting Debtor’s income, as set forth on Schedule I, for the above 2 items results in total monthly income of \$3,482.00 for Debtor’s household.

With regard to the expenses set forth on Schedule J, Debtor testified that the expense numbers for “clothing” and “laundry and dry cleaning” were transposed. Thus, Debtor’s laundry and dry cleaning expense is \$25.00 per month rather than \$200.00. Also, Debtor testified that a monthly expense of \$75.00 for clothing is more accurate.

Debtor also testified that he, his fiancé and his fiancé’s 3 smaller children all live in the same household and, Debtor and his fiancé are expecting a child. With respect to the monthly rental payment of \$850.00, it appears from Debtor’s uncontested testimony that Debtor pays \$850.00 per month for his apartment. All the other food, clothing and housing expenses appear

¹ Although Debtor’s fiancé is not a joint Debtor in this case, her income contributes to the overall income of the household.

reasonable under the circumstances, except for Debtor's monthly budget of \$155.00 per month for telephone. Debtor failed to adequately explain his need to spend \$155.00 per month on telephone, particularly in light of the fact that most telephone companies are now offering unlimited calling packages. Absent some explanation, other than Debtor's naked assertion that his telephone bill is \$155.00 and will remain such, the Court will not approve such an expense. Thus, the Court will only allow Debtor a monthly telephone expense of \$75.00.

Debtor's transportation expense is equally unsubstantiated. On his original Schedule J, Debtor listed an expense of \$100.00 per month for transportation, \$75.00 per month for auto insurance and \$453.00 per month for an installment payment on his automobile. On his amended Schedule J filed June 22, 2005, Debtor increased his transportation cost to \$250.00 per month and increased his insurance expense to \$374.00 per month. Debtor gave absolutely no explanation for the significant increases, particularly as it relates to his auto insurance, which, according to Debtor's amended Schedule J, is a staggering \$4,488.00 per year for one vehicle. Given Debtor's complete failure to substantiate his transportation and auto expenses, the Court will only allow those expenses that were set forth on his original Schedule J, which monthly expenses total \$628.00.

Adding the disallowed telephone and auto expenses, the additional \$125.00 in clothing expense that Debtor testified was not necessary and the \$200.00 trailer payment, the Court concludes that Debtor's allowable expenses total \$2,523.00.

Subtracting Debtor's reasonable and necessary household expenses of \$2,523.00 from Debtor's monthly income of \$3,482.00 reveals that Debtor has monthly disposable income of \$959.00, which amount is greatly in excess of Debtor's proposed monthly payments of \$325.00

as set forth in Debtor's Second Amended Chapter 13 Plan. Based upon the foregoing discussion, the Court concludes that the Trustee's and Holly Smith's objections to confirmation of Debtor's Chapter 13 plan are well-taken. Accordingly,

IT IS ORDERED that the objections to confirmation of Debtor's Chapter 13 plan filed by the Chapter 13 Trustee and Holly Smith are sustained; confirmation of Debtor's Second Amended Chapter 13 Plan is denied; and Debtor is granted five (5) days from the date of this Order to file a Third Amended Chapter 13 Plan providing for monthly plan payments of \$600.00 for the first 3 months of the plan, and monthly payments of \$959.00 for a period of 33 months thereafter.

IT IS FURTHER ORDERED that if Debtor fails to increase the funding of his Chapter 13 Plan in accordance with this Order within 5 days, this case will be dismissed without further notice or hearing.

BY THE COURT

A handwritten signature in cursive script, reading "Ralph B. Kirscher", is written over a horizontal line.

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana